IN THE

# Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1673

OSCAR E. COX,
Petitioner,

v.

THE CHESAPEAKE AND OHIO RAILWAY COMPANY,
a corporation,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

## BRIEF OF RESPONDENT IN OPPOSITION

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WO. 3-8700—WO. 3-8701

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### OPINIONS BELOW

The Judgment of the United States District Court for the Eastern District of Michigan, Southern Division, is printed as Appendix A in Petitioner's Petition, page 6a. The Opinion of the United States Court of Appeals for the Sixth Circuit is unreported and is printed as Appendix A in Petitioner's Petition, page 3a.

## JURISDICTION

The Judgment of the United States Court of Appeals for the Sixth Circuit was entered on March 14, 1974, and is printed as Appendix A in Petitioner's Petition, page 3a. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

## QUESTION PRESENTED

Whether Petitioner, a United States citizen employed by Respondent, may maintain an action under the Federal Employers' Liability Act, 45 U.S.C. §51, against Respondent, an American railroad company, for injuries sustained in Canada in the course of his employment.

## STATUTE INVOLVED

The Federal Employers' Liability Act, 45 U.S.C. §51, is set forth in Petitioner's Petition, page 3.

## STATEMENT

Petitioner, a citizen of the United States and employed by Respondent, a common carrier by railroad engaged in interstate and foreign commerce, was injured in the course of his employment at or near the City of Dutton, Province of Ontario, Dominion of Canada. As a result of the injuries sustained, Petitioner availed himself of the laws of Canada and was awarded medical compensation payments and a

permanent-partial disability award under the provisions of the Workmen's Compensation Act of Ontario Canada, Appendix A, *infra,* page 1a. Subsequently Petitioner filed suit in the United States District Court for the Eastern District of Michigan, Southern Division, claiming damages under the provisions of the Federal Employers' Liability Act. On Motion for Summary Judgment the District Court entered judgment in favor of Respondent on the grounds that the law of Canada governed the rights of Petitioner for the injuries suffered. From that judgment Petitioner appealed to the United States Court of Appeals for the Sixth Circuit which affirmed the judgment by Opinion dated March 14, 1974, which Opinion is set forth by Petitioner at page 3a of his Appendix.

## ARGUMENT

The issue in the present case is uniquely narrow, it being whether an employee of an American railroad injured in Canada in the course of his employment may invoke the provisions of the Federal Employers' Liability Act, so-called, 45 U.S.C. §51, as a remedy against his employer or whether his remedy lies solely under the law of Canada.

### I.

### THE DECISION BELOW IS CLEARLY CORRECT

The sole issue in this case was decided adversely to Petitioner by the unanimous opinion of this Court in *New York Central Railroad Company* v. *Chisholm, Adm.,* 268 U.S. 29, under an almost identical factual situation. In *New York Central* v. *Chisholm, Adm., supra,* an American citizen, employed by an American railroad, was fatally injured in Canada in the course of his employment. In that case

this Court held that the provisions of the Federal Employers' Liability Act do not have extra territorial effect and that the law of Canada provided the sole remedy for Petitioner. The doctrine set forth in *New York* v. *Chisholm, Adm., supra,* was cited with approval by this Court in *Lauritzen* v. *Larson,* 345 U.S. 571, when this Court stated, at p. 581:

> "It did so by reference to the Federal Employers' Liability Act, which we have held not applicable to an American citizen's injury sustained in Canada while in service of an American Employer. *New York Central R. Co.* v. *Chisholm, Adm.,* 268 U.S. 29."

The Court below therefore did not decide an important question of Federal law which had not been settled by this Court. On the contrary, the decision below followed precisely the decision of this Court in *New York Central* v. *Chisholm, Adm., supra,* under a strikingly similar factual situation.

## II.

### THERE IS NO CONFLICT OF DECISIONS

Petitioner cites no authority and makes no assertions that the decision of the Court below is in conflict with the decision of any other court of appeals or the applicable decisions of this Court. He is merely dissatisfied with the ruling below.

Respondent asserts that the ruling below is not only in conformity with the decision of this Court in *New York Central* v. *Chisholm, Adm., supra,* but is also compatible with the later decisions of this Court in *Nagueira* v. *New York, New Haven & Hartford Railroad Company,* 281 U.S. 128, and *Pennsylvania Railroad Co.* v. *O'Rourke,* 344 U.S. 334. In both of those cases Petitioners were railroad em-

ployees injured in the course of their employment, the injuries occurring on navigable waters rather than on land. In both cases Petitioners sought recovery against their employers under the provisions of the Federal Employers' Liability Act. In both cases this Court held that the Federal Employers' Liability Act did not provide a remedy for Petitioners but their remedy was afforded solely by the provisions of the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. §901, *et seq.* The decisions of this Court in *Nagueira* v. *New York, New Haven, etc., supra,* and *Pennsylvania Railroad Co.* v. *O'Rourke, supra,* are consistent with this Court's decision in *New York Central Railroad Company* v. *Chisholm, Adm., supra,* in that in each case this Court held that the law of the place where the accident occurred governed the remedies of Petitioners. The ruling of the Court below in the instant case is squarely within those principles. To hold otherwise would be to afford Petitioner in the instant case a choice of remedies not available to railroad workers elsewhere.

## CONCLUSION

For the foregoing reasons it is respectfully submitted that this Petition for Writ of Certiorari should be denied.

Respectfully submitted,

ROBERT A. STRAUB
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Dated: May 21, 1974

## APPENDIX A

## IN THE

# District Court of the United States

### For the Eastern District of Michigan
### Southern Division

| | |
|---|---|
| Oscar E. Cox,<br>Plaintiff,<br>vs.<br>Chesapeake Ohio Railroad Company, a Corporation,<br>Defendant. | Civil Action<br>No. 38044 |

## AFFIDAVIT

State of Michigan,
County of Oakland—ss.

M. D. Brickman, being first duly sworn, deposes and says that he is familiar with the facts of this case and is duly authorized by defendant to make this Affidavit in connection therewith, and says:

1. The accident giving rise to the instant litigation occurred at or near Dutton, Ontario, Canada, on or about August 13, 1970 when plaintiff, an employee of defendant, was injured while in the course of his employment with defendant.

2. That as a result of the accident and injuries sustained plaintiff has received benefits under the Workmen's Compensation Act of the Province of Ontario, both as to payments for medical expenses and for disability benefits.

Further deponent saith not.

/s/ M. D. Brickman

Subscribed and sworn to before me this 27th day of March, 1972.

/s/ Marilyn J. Karakas
Notary Public, Wayne County, Michigan.
Acting in Oakland County.
My commission expires March 22, 1975.